

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WALTER BECK CORPORATION d/b/a THE	)	CIVIL DIVISION
RAINBOW INN,	)	
	)	Civil Action No. 04-348 - Erie
Plaintiff,	)	
vs.	)	JUDGE MAURICE B. COHILL, JR.
	)	
SAFECO CORPORATION, AMERICAN	)	
ECONOMY INSURANCE COMPANY, and	)	
AMERICAN STATES INSURANCE	)	
COMPANY,	)	
	)	
Defendants.	)	

**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Walter Beck Corporation d/b/a The Rainbow Inn (“Beck Corp.”), by and through its undersigned counsel, hereby files this Motion for Partial Summary Judgment and, in support thereof, avers as follows:

1. Beck Corp. operated under the Pennsylvania registered fictitious name of “The Rainbow Inn” and operated a restaurant known as the Rainbow Inn located at Route 59, Marshburg, McKean County, Pennsylvania 16735 (“the Rainbow Inn”). (Ex.<sup>1</sup> 1, Complaint, ¶2, Ex. 31, Ex. 31, Affidavit of Harold Beck, ¶2).

2. For and in consideration of a valuable premium paid by Beck Corp., an “Ultra Series Package Policy” to Beck Corp. numbered 02CC771900 and providing coverage for the period of April 23, 2003 to April 23, 2004 (“Policy”) was issued to Beck Corp. as a renewal of a prior policy issued by the defendants. (Ex. 1, Complaint, ¶8; Ex. 2, Amended Answer, ¶5). A true and correct copy of the Policy is included in the Appendix as Exhibit 3 and incorporated herein by reference as if set forth in its entirety.

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<sup>1</sup> All references to Exhibits herein refer to the Exhibits included in the Appendix filed herewith.

3. On December 5, 2003, while the Policy was in effect and during the policy period, the Rainbow Inn and its contents were destroyed by fire (the "Fire"). (Ex. 31, Affidavit of Harold Beck, ¶9).

4. The Fire completely destroyed the Rainbow Inn and its contents such that it could not be repaired and its contents could not be salvaged. (Ex. 31, Affidavit of Harold Beck, ¶11).

5. By letter dated February 11, 2004, Safeco denied coverage for the losses associated with the Fire. (Ex. 8, 2/11/2004 Letter from Paul Smith to Beck Corp. ("Denial Letter"); Ex. 31, Affidavit of Harold Beck, ¶19-20).

6. The Denial Letter sets forth the sole basis for Safeco's denial of Beck's claim. (Ex. 8, Denial Letter; Ex. 4, Smith Depo, 51-52, 58-61, 69-70; Ex. 16, 7/23/2004 Letter from Paul Smith to Harold Beck).

7. The issue presented herein involves a plainly worded provision of the Policy issued to Beck Corp. for the Rainbow Inn and the question of whether the Rainbow Inn included a proper fire suppression system that was properly inspected and maintained.

8. Based upon the evidence set forth in Plaintiff's Concise Statement of Material Facts (which is incorporated herein by reference as if set forth in its entirety) and upon well-settled principles of law set forth in Beck Corp.'s Brief in Support of this motion (which is also incorporated herein by reference as if set forth in its entirety), Beck Corp. respectfully submits that the Rainbow Inn included a proper fire suppression system that was properly inspected and maintained in accordance with the terms of the Policy, that there is no genuine issue of material

fact relating to the issues presented, and that summary judgment must be entered in favor of Beck Corp. on the issue of the defendant's(s') liability for the breach of the insurance contract.<sup>2</sup>

WHEREFORE, Walter Beck Corporation d/b/a The Rainbow Inn respectfully requests that this Honorable Court enter judgment in its favor and enter an Order in the form submitted herewith.

Respectfully submitted,

/s/ Richard T. Victoria

Richard T. Victoria

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<sup>2</sup> Beck Corp. only seeks summary judgment on the issue of liability for breach of the insurance contract. It is not, at this time, seeking summary judgment regarding any waiver or estoppel claim, the amount of the loss or damages to be paid or the other claims, such as bad faith pursuant to 42 Pa.C.S.A §8371, set forth in the Complaint. As liability for breach of contract may be a threshold issue in this case, to the extent this motion for summary judgment is granted, Beck Corp. respectfully suggests that additional summary judgment motions may be appropriate and reserves the right to seek leave to file such additional motions as appropriate.

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COMPANY,	)	
	)	
Defendants.	)	

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT was served upon counsel for the Defendant by electronic service this 6<sup>th</sup> of December, 2006 at the following address

Daniel P. McDyer, Esquire  
ANSTANDIG, McDYER & YURCON, P.C.  
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/s/ Richard T. Victoria  
Richard T. Victoria